Letters to Chas. O'Conor.

THE

DESTRUCTION OF THE UNION

IS

EMANCIPATION.

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LETTERS

OF

NATHANIEL MACON TO CHARLES O'CONOR.

NUMBER ONE.

MONTGOMERY, Alabama, August 24th, 1860.

When you delivered your speech, a few months ago, at the Academy of Music, I embraced the occasion to express to you my admiration of the candor and fairness with which you had treated the subject of American slavery. I thought the ground you occupied in that speech altogether worthy of your eminent reputation as a logician. It was something new to find a Northern man willing to look the question fairly in the face, and I confess I thought you a little heroic when you discussed it in the light alone of facts and of reason. I believe with you, on the subject of American slavery, that there is no middle ground to be occupied. It is right and just that the black race should be held in bondage, or it is wrong and sinful. It is right in my judgment; because we have two unequal races, which cannot live together in harmony in any other relation than that of master and servant. Safety to society demands the *continuance* of that relation, as it demands and justifies, on the same principle, the scheme of criminal jurisprudence, even to the sacrifice of life; as it demands and justifies an aggressive war, the prosecution of which often leads to the wholesale slaughter of the most patriotic and chivalrous of the people. Safety to society fully justifies American slavery, because an act of freedom would be the signal of an "irrepressible conflict" indeed, between the races, which would end in the destruction of the blacks, and the demoralization of the whites. The United States occupy a peculiar position in connection with the negroes. The latter are distributed over about half the States of the Union. While England maintained slavery it had only a colonial existence. The Imperial Government recognized it only in its colonies. When it was abolished in the West Indies, the act of emancipation left the home people as free of the black race as they were before. All, or nearly all, the evils and sacrifices of the act fell upon the colonies. It was there that the conflict of races commenced. Spain maintains slavery in Cuba and Puerto Rico; not at home. Brazil is a slave State; but the gulf between the white and black races in Brazil is narrow indeed when compared with that which separates the whites and blacks of this country. I maintain that the disasters to flow from an act of freedom, especially to the blacks, will be greater or less, as the two races are

more or less widely separated, morally and intellectually. It is for these reasons, amongst others, that I would guard and defend every point in the fortress of the existing Government of the Union, because I believe the maintenance of that Government is absolutely necessary to the maintenance of slavery. The primary consideration, with me, is the protection and welfare of the whites. I think it just to sustain the latter, because they are the dominant and productive race. They have peopled and subdued this continent, and accomplished more in the way of human progress than any other like population on the globe. They have established and maintained the best Government in the world. They have organized more schools and churches; constructed more roads, canals, and telegraphs; built more ships, boats, and cities; cleared more forests, cultivated more ground, and produced more from the earth, than any other like population. Their wealth, confessedly great, is better distributed; their industry better organized; their people, better fed, clothed, and educated, than any other. Their newspaper press alone, separated from all other educational institutions, is to-day a more powerful and effective medium of popular instruction than the combined press, schools, and colleges of any other nation.

These reflections lead one to the conclusion that the people who have effected such wonderful results are in no condition to accept a political partnership with the negro race. The latter are now enslaved. Their enfranchisment proposes to make them co-equal inhabitants with the former. Such an achivement would be an act of folly, injustice, and cruelty, without a parallel in the history of mankind. I am opposed to it, on the ground that it would inflict a fatal injury upon both races. I think it not only just, then, to hold the blacks in bondage, but to strengthen and fortify the Federal Union, which is a breakwater to receive and beat back the surges of anti-slavery fanaticism of this and of every other country. I do not care to inquire who was originally at fault, if anybody, in ordaining American slavery, nor will I discuss the authority of the act. I find the negroes vastly improved through its instrumentality. Their improvement has been greater even, if possible, than that of the whites. I do not see, therefore, as a movement of the black people, that it has resulted in anything but benefit to them and their posterity. Slavery, in this view, is just, and should be defended by every right-thinking man. If it is unjust, there is no ground upon which it can be sustained. If it is unjust, it is such a wanton invasion of human rights as to demand instant rebellion on the part of the negroes, and universal condemnation on the part of the whites. So far I agree with you in the position you occupy; I believe it to be impossible that two such unequal races can exist as co-equal inhabitants of the same country. The progress of the one would quickly override and destroy the other. In proof of this I need only refer you to the history of our Indian relations. Under the mildest policy of the State to the tribes, the latter have been reduced from about three millions to three hundred thousand persons. Here is evidence of an "irrepressible conflict," indeed—a conflict which has ended in building up a powerful government by the superior party, and in the degradation or destruction of the infe-

rior—which has, in truth, nearly exterminated the savages by the implements of civilization—implements which they fear to-day more than the rifles of our soldiery.

So far, I repeat, I agree with you concerning the moral character of American slavery. Upon the policy and principle of its government, as well as upon its federal character, I regret to say I cannot assent to your views. I regard it as having no other legal existence, so far as the Federal Government is concerned, except that which has been imparted to it by the second section of the first article of the Constitution, which provides that "three-fifths of all persons" held to service or labor shall be added "to the whole number of Free Persons," and be counted as a basis of representation in Congress; and the second section of the fourth article of the Constitution, which says: "No person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on claim of the party to whom such Service or Labor may be due." These constitutional covenants fix the *status* of the negro, so far as the federal law is concerned, as a "Person held to Service or Labor," contradistinguished from a "free person." He is not, then, under that law, a mere chattel, he is something more—he is a *person*. He belongs to his master by virtue of the local law—he is a chattel by that law—and this brings me directly to the conclusion that the negro race in this country has three distinct political characters: 1. Those who are free. 2. Those who are enslaved by the States or the local law. 3. Persons held to service or labor who are counted as a basis of federal representation, and who, in a named event, are to be surrendered up.

I think the present a fit occasion to suggest to you that peculiar responsibilities rest upon those who maintain that slavery is just. They should not, at least, permit themselves to take on carelessly or thoughtlessly partisan views. They should hold it to the strictest legal account. They should contemplate it as a system governed by laws—depending wholly for its existence upon laws. It is not like minerals dug from the earth, like cabinet ware made by machinery, like colors produced by compounding—it is the enslavement of a race of men, and the least that can be said is, that it shall have the completest sanction of the law. Slavery, then, should not be mixed up with politics—should not be the foot-ball of parties. It should exist by authority of the people alone, and be governed wholly by them. The powers of Congress over it are confined absolutely to the two subjects referred to. I find no difficulty in thus treating American slavery—in thus assigning it a character and a place in the midst of general harmony, and surrounded by general security.

I propose, sir, hereafter to bring to your notice a little political topography in respect to this matter. I shall not do this vaguely, and by loose observations, but shall proceed at once to examine the chart of the Federal Government—the Constitution itself. I shall make this survey not alone with a view of defining the true legal existence of slavery, but shall endeavor also to determine by whom it may be maintained.

This latter branch of the inquiry will lead me to an examination of the action of the Government, under the Articles of Confederation and under the existing Constitution. You deny that the people of the Territories have any right to establish or abolish it. I think they have soverign jurisdiction over it within their respective limits. I shall undertake to prove that I am right, and that you are wrong, in this particular. I shall draw my proof from the action of the Government alone, under the Confederation, and under the Constitution.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER TWO.

MONTGOMERY, Alabama, August 26th, 1860.

In the prosecution of my promised topographical survey of the Constitution, touching the powers of Congress over the Territories, including the subject of slavery, I shall take it for granted you agree with me—perhaps I may safely and with more modesty say I agree with you—that Congress was created by the Constitution, under an express delegation of authority, and is wholly limited to the conditions of the grant. I will look with you, then, through that compact for the right to legislate for the people of the Territories—now claimed, be it remembered, for the express purpose of legalizing slavery therein.

I. Was this authority the subject of a special grant? If not,

II. Is the exercise of it necessary to carry into effect any of the special grants? If not,

III. Is its existence a fair out-birth, if I may so speak, of the federal system?

I present the case, you will admit, sufficiently broad to let in almost any species of construction by which the coveted power may be maintained. What I want, sir, is proof of the authority. When it is presented, I for one shall be ready to justify its exercise by Congress. I do not myself see it. I do not, to be accurate, see the specific grant, nor that such legislation is necessary to carry into effect any of the specific grants, and I am clear it is not a fair expression of the general system.

The *only* powers conferred upon Congress, having reference to the Territories, are—

I. "Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory and *other* property *belonging* to the United States."

II. "New States may be admitted by the Congress into this Union."

It is not now contended, I believe, that the first of these grants conveys any authority to Congress to exercise the functions of civil government in the Territories. "The territory and *other* property" were placed in the hands of Congress to be disposed of for the common benefit. So

that, after all, the sole authority of Congress over the people of the Territories, except, of course, that which appertains to the general interests of the Union, under the power to regulate commerce, to coin money, establish post offices and post roads, &c., is confined to the second provision quoted. I have just risen from a careful reading of the Constitution, and find, I repeat, not another word conveying to Congress any authority on the subject. These are the conclusions to which I have arrived by a simple reference to the Constitution itself. I think it fair, however, to refer to the events attending the adoption of that compact, and to the early legislation of Congress on the subject, to fortify or impeach the accuracy of my judgment upon this matter. The main question is: Whether the framers of the Constitution intended by it to give the Federal Government, in any contingency, jurisdiction over the existence of slavery, or any authority to manage or control it? Whether it was reserved as a matter exclusively appertaining to the States or not? And if it was intended to be a State interest, whether there is any legal distinction between a State and what we call a Territory in respect to the right of the people to determine the question of its existence and government?

Perhaps in the discussion of the subject, it may be well to advance another step and enquire, at once, whether the right of self-government of any political community in this country, State or Territorial, has been restricted or limited by the Federal Constitution?

I have referred in this letter, to the only provisions of that compact by which authority is given to Congress over Territorial interests: and I think it perfectly evident that, by the letter of the grants, the powers of Congress over this subject are confined to the right "to dispose of, and make all needful rules and regulations respecting, the territory and *other* property belonging to the United States," and the right to admit new States into the Union. Neither of these grants taken by itself confers upon Congress legislative powers over the people. It remains then only to refer to the history of their origin, to see whether, notwithstanding the literal meaning of the powers thus delegated, it was, in reality, the intention of the States, when the Constitution was adopted, to confer upon Congress such powers. I start with the declaration, that previous to the Revolution, the people of all the colonies maintained their exclusive right to regulate their internal polity and government in their own way. While they confessed a loyal attachment to the British Crown, they did not surrender the right of self-government. Maryland, previous to the Revolution, thus expressed the voice of all the colonies:

"To maintain inviolate our liberties, and to transmit them unimpaired to posterity, was our duty and first wish, our next, to continue connected with and dependent on Great Britian. *Provided*, the sole and exclusive right of regulating the internal polity and government of this colony be reserved to the people thereof."

It is unnecessary to furnish historical proof that the people of the colonies asserted their independence of the Mother Country *solely* on the ground that the latter denied to them the right of self-government.

The history of the Revolutionary struggle, drawn from the Parliamentary debates at the time, abundantly establishes the fact, that while the colonies acknowledged the authority of the Empire and their loyal attachment to the Crown, they maintained their right, nevertheless, to regulate their own internal polity and government in their own way. They denied the authority of Parliament to legislate for them, in respect to local matters, on the ground of their own *exclusive, inherent, inalienable right to govern themselves.*

I call your attention to this point because, in the course of my observations upon the issue now under discussion, I shall endeavor to show that it is identical with that which was originally made between the colonies and Great Britain. The inherent right of the people to regulate their own internal affairs, to govern themselves as colonies and as territorial communities or States, is the principle for which we are contending—a principle quite as important and sacred when menaced by Congress as when denied by the British Parliament.

In the Convention to frame the Constitution—after conferring general powers upon Congress to regulate commerce, to coin money, to establish post offices, &c.—Mr. Madison referred to the appropriate committee these propositions in reference to the Territories:

"To dispose of the unappropriated lands of the United States."

"To institute temporary governments for the new States arising therein."

"To exercise exclusively legislative authority at the seat of Government."

These propositions resulted in the adoption of three distinct provisions of the Constitution, two of which I have quoted, and the third which gives Congress the right "to exercise exclusive legislation in all cases whatever over the District of Columbia."

It is a significant fact that Mr. Madison's direct proposition to confer power upon Congress "to institute temporary governments for the new States," was so modified as to authorize that body "to admit new States into this Union." The question whether this latter provision gives authority to Congress to institute temporary governments or not, I will not now discuss. But when we reflect that the public mind of that period was very much prejudiced against every species of colonial dependence, we have no right to infer that it was intended to grant to the National Legislature those powers of local government which were delegated over the District of Columbia. Granting, then, that the right to admit new States carries with it the right to acquire territory, and to authorize temporary governments, the question still remains, whether such authorizations conflict with the right of the people to regulate their own internal affairs in their own way? I think it apparent that the former in no manner conflicts with the latter; and that the power to admit new States, without any limitation in respect to population, was adopted in avoidance of the scheme of Congressional government of the Territories now contended for by Mr. Breckinridge and his friends.

It will be remembered that at the period of the adoption of the Articles of Confederation, 1778, we possessed no public lands. It was

not till the year 1784 that the great land districts of the Northwest were conveyed to the United States. It was then that Mr. Jefferson, as chairman of a committee, reported his scheme "for the temporary government of the territory ceded, or *to be ceded*." This scheme was evidently considered with great care, and it is entitled to a minute examination—not because it is authority to bind us, but as evidences of the opinions of the country, at that time, in respect to the policy of the Government in connection with its Territories. It will be observed that what we call Territories were then called "States," or "new States." The name, however, is not material. A reference to this point is only necessary because many modern writers have regarded the word "Territory" as indicating a species of dependence upon the General Government. No such distinction was recognized by the framers of the Government. The word "Territory" as a designation of a political community, is not to be found in the Constitution, and, I believe, it was not used in that sense till some years after the adoption of that compact.

Mr. Jefferson's scheme provides:

I. That the Territories ceded or to be ceded, shall be formed into additional *States*.

II. That on the authority of Congress "the free males of full age" may meet together for the purpose of forming a temporary government, to adopt the constitution and laws of any one of the States—that "*That such laws, nevertheless, shall be subject to alteration by their ordinary Legislature.*"

III. That such temporary government shall remain in force till they have twenty thousand inhabitants, when they may establish a permanent constitution and government for themselves.

IV. That when any State so organized shall have a population equal to the least numerous of the United States, such State shall be admitted into the Union.

To these were added certain fundamental conditions:

I. That the new States shall forever remain a part of the United States.

II. That in respect to persons, property, and Territory, they shall be *upon a footing of equality with the original States*.

III. That they shall pay a part of the Federal debts on equal terms with the original States.

IV. That their government shall be republican in form.

It is then declared that, on the foregoing conditions, a *charter of compact* shall be formed, which shall be duly executed by the President, under his hand and seal, and shall stand as fundamental conditions "between the thirteen original States and those newly described," unalterable but by the joint consent of both parties.

It will be seen from this scheme that it was the purpose of the Congress of the Confederation to definitely settle the relations to exist between the new Territories and the old States. The plan proposed was intended to be fundamental, organic in its character—to govern the present and the future. I do not refer to it as the existing law. I wish only to exhibit the views of those who were more familiar with the

opinions and purposes of the Revolutionary period than we are now. The conditions referred to were to be reduced to a *compact.* This compact had its legal parties, both of which were free to assent to its provisions, which were proposed and adopted by the Congress, in the first instance, and submitted to the new States for adoption by their "ordinary Legislature."

It has been maintained that the plan suggested was adopted by Congress, and *imposed* upon the "new States." This is abundantly refuted by reference to the conditions of the plan, but is still more conclusively answered and denied by the solemn declaration "that all the preceding articles shall be formed into a *charter of compact.*" A compact is an agreement between two parties, and pre-supposes the voluntary assent of each to its conditions. This assent being necessary, in order to form the compact in question, it is an admission, on the part of the Congress of the Confederation, of the right of the new States to adopt or reject it. What are the leading features of this compact? "The free males of full age" are to organize a temporary government; adopt or ordain their own laws; are required to pay a part of the federal debt; in respect to persons and property they are to be upon an equality with the old States, and are to remain forever a part of the General Government. These are the conditions upon which the Territories were put into operation under the Articles of Confederation. Whatever you may think of the character of the scheme in other respects, I think you will admit that the prevailing idea of Territorial dependence and subjection did not enter into it. I shall resume this subject in my next letter, and furnish still more conclusive evidence that the principle of local self-government has never been impaired, or sought to be impaired, by the fathers of the Republic.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER THREE.

MONTGOMERY, Ala., August 26, 1860.

You and I desire the utmost protection of slave property—precisely that measure of protection which we would extend to every other kind of property. We will go along with the most active to shield slavery from the encroachments of Abolitionism, here or elsewhere. I think it equally important to protect it from the injudicious efforts of its friends. The latter is the salient point, just now, of the fortress. What is really most needed, in the way of strengthening the slave States, is the universal recognition of the principle, that slave property, and all other kinds

of property, rest upon the same basis, with reference, of course, to the Federal Government. That is the doctrine of equality, of peace, and of unity. I understand it to be, at the same time, the doctrine of the Supreme Court of the United States. That tribunal, in the case of Scott, say:

"No word can be found in the Constitution which gives Congress a *greater* power over slave property, or which entitles property of that kind to *less* protection than property of any other description." The Court, in laying down this fundamental rule, had previously noted that, by the Constitution, slave property was entitled to peculiar protection if the slave escapes from his owner. It is, then, the fact of an escape of the slave that gives Congress jurisdiction of slave property. It is a jurisdiction over fugitives, on the ground that the latter owe service or labor, by virtue of some local law. As to slavery itself, I know of nobody or party to be trusted with it, except the people interested in it. They are the only persons who are not, in a greater or less degree, opposed to it. Those who say it is a leprous moral evil, a stain upon and a crime of the people who maintain it, are to have no share in its government, if I can prevent it. It is for this reason, amongst others, that I protest against the exercise of the least authority over it by Congress, except for extradition purposes. The impossibility of executing the fugitive clause of the Constitution should be a warning to the South against trusting slavery to anybody but the people interested in its maintenance. Congress will ever be constituted of its enemies; its enemies are our enemies, and can do us no service. I am, for this reason—to say nothing of the propriety of maintaining the integrity of the Constitution—utterly opposed to the usurpation suggested in Mr. Jefferson Davis' Senate resolutions. Mr. Davis is no true friend of the South when he seeks to procure for slave property a Federal endorsement and protection beyond that which is warranted by the Constitution. Those who framed the Government intended to confer no such power upon Congress. Not a line of matter adopted by the Federal Convention authorizes its exercise. Not a voice in the Federal Convention from the Southern States was ever heard in favor of such a project. Slavery was a matter of domestic interest; and, aside from the covenant pledging the surrender of fugitive slaves, the Federal Government was clothed with no authority over it. If what is now contended for by Mr. Davis is authorized by the Constitution—if it is the right of Congress to exercise *jurisdiction* at all over slavery, except fugitives—the laws they may enact on the subject are equally obligatory and binding upon the States and the Territories. The jurisdiction of Congress being conceded, the Constitution fixes the character of the laws which may be enacted. Thus:

"This Constitution, and all laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the *supreme law of the land*, and the judges in every State shall be bound thereby, *anything in the Constitution or laws of any State to the contrary notwithstanding.*"

I present this view of the subject in order to exhibit the utter folly of Mr. Davis' proposition, and to show that the slave States, in relying upon the counsel of such men, are being led not only into grave errors, but are unsettling the very foundations of our domestic institutions. What is most apparent is that the people who own slaves are the only persons who can be safely entrusted with their management. When the South surrenders this principle, and confers upon Congress jurisdiction over slavery, the seeds of dissolution will have taken root, not alone involving the destruction of the Union, but ultimately, and at an early day, the division of the slave States themselves. There are far more homogeneous elements to bind all the States together than will be found, after dissolution, to bind together the slave States.

I propose, for a moment, to return to the action of the Government during its existence under the Articles of Confederation. The first fundamental condition in Mr. Jefferson's scheme for the government of the Territories is in these words:

"That they [the new States] shall forever remain a part of the United States of America."

I think it worthy of observation that this clause was regarded as necessary, in order to secure the integrity of the common jurisdiction. It is perfectly evident that, without it, the country over which it was extended would have remained "a part of the United States of America." But it must be recollected that, in 1784, the spirit of independence, with respect to all political communities, was the ruling idea of the day. We had just emerged from a successful war with the greatest power in the world. It had been found impossible to organize a General Government, with sufficient authority to insure its successful operation, chiefly because the colonies were strongly prejudiced against centralization. They were unwilling to surrender any of their essential rights, even with respect to matters strictly national in character. They were inclined, by a natural sympathy, to sustain every movement looking to the independence of each political community.

After the great land districts had been conveyed to the confederated Government, Congress determined that any new States to be formed therein should be subject to the jurisdiction and laws of that Government. Such, however, was their respect for popular rights, that, instead of relying upon mere legal deductions, they required each new State, through the votes of its people, to assent directly to the fundamental condition pledging the new State to be a part of the confederated Government. That condition became one of the Articles of Confederation, and so did all the articles and conditions in the scheme, after they had received the sanction of the people of the new States—after the *charter of compact* was formed. It was this charter of compact that bound the new States to the General Government—bound the people thereof as the people could alone be bound in that day—by their votes. I cannot refrain from calling your especial attention to this point, because it evinces, on the part of our ancestors, not only respect for the people living at the period referred to, but settles principles of self-government for all coming generations of men.

That my conclusions are correct in regard to the scheme for the government of the Territories becoming a part of the confederated Government, you will hardly question, after consulting the second fundamental condition thereof, which is in these words:

"That in their persons, property and territory, they shall be subject to the Government of the United States in Congress assembled, and to the Articles of Confederation, *in all cases in which the original States shall be so subject.*"

This was one of the conditions of the compact. It placed the new States upon an equality with the old States. It imposed upon the new all the obligations which had been assumed by the old States. Notwithstanding the fact that the Territories, which were then without inhabitants, constituted a part of the federal jurisdiction, the people to occupy them thereafter were asked formally to declare themselves "a part of the United States of America." Thus the people were treated and held by the men of the Revolution. "Squatter Sovereignty" was not then in disrepute. It was the law of all the colonies—it was the law of the rebellion, of Lexington and Bunker Hill, of Saratoga and of Yorktown. I refer to these political events not as legal authorities, for I know that since their occurrence the old Confederation has given way to the Government of the Union. The latter is now the law, and as its compact confers upon Congress no power over the people of the Territories, except the power to admit new States into the Union, I think it perfectly clear that the subject of slavery, with all other domestic interests, is confided to the people. The rights of self-government remain precisely where they were when the Revolution was organized, where they were under the Articles of Confederation—in the people of every organized community.

I have a word to say with regard to the coveted power of Congress over the particular interests of slavery in the Territories, which many good men believe exists, chiefly on the alleged authority of the Supreme Court in the Dred Scott case. The Court say, in that case, that the citizens of the Territories "cannot be ruled as mere colonists, dependent upon the will of the General Government, and to be governed by any laws it may think proper to impose." * * "The Federal Government can exercise no power over person or property beyond what that instrument [the Constitution] confers, nor lawfully deny any right which it has reserved."

We look in vain for any authority over the subject of slavery. In the language of the Supreme Court, "No word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection, than property of any other description." Slave property is recognized by the Constition, but this recognition rests wholly upon the local law. It is not recognized in New York because there is no law of New York to maintain it. The Federal Government only regards it as property, because it respects the authority of every local government within the Union, not because it is an individual interest. It is the business of the local governments to determine, in the first place, the question of property in

negroes, and thus to define the rights of persons. On the strength of such laws, and within their scope and jurisdiction, the United States will respect the individual rights of slaveholders.

The Constitution has expressly prohibited Congress from the exercise of certain powers. For instance, Congress can make no law for the establishment of religion; to abridge the freedom of speech; to prevent the people from assembling; from bearing arms; deny the right of trial by jury; and embracing many other positive restrictions. The Court, in speaking of these prohibited powers, say:

"It is a total absence of power, everywhere within the dominion of the United States, and places the citizens of a Territory, so far as these rights are concerned, on the same footing with citizens of the States, and guards them as firmly and plainly against any inroads which the General Government might attempt, under the plea of implied or incidental powers. And if Congress itself can not do this—if it is beyond the powers conferred on the Federal Government—it will be admitted, we presume, that it could not authorize a Territorial Government to exercise them. It could confer no power on any local Government, established by its authority, to violate the provisions of the Constitution."

The prohibited powers are here discussed. The Court say Congress cannot legislate upon these subjects, and that Territorial Governments of course cannot.

It is a remarkable fact that many of our public men have regarded this decision of the Court as prohibiting the Territorial Legislatures from exercising any authority over the subject of slavery. This conclusion of course has no foundation, unless it can first be established that slavery is amongst the prohibited powers named in the Constitution. In point of fact, it is not referred to at all. It is not amongst the powers specially entrusted to Congress, nor amongst those expressly prohibited. It leaves slavery where it leaves every other matter of domestic interest —to the people of each State and Territory. I shall again call your attention to the subject.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER FOUR.

MONTGOMERY, Alabama, August 28, 1860.

I think I have shown conclusively, by historical records, drawn from the archives of the Confederation, that it was the purpose of the early statesmen to maintain, everywhere in this country, the principles of

local self-government; that the new States or Territories were organized upon terms of equality with the old States. The former were required or permitted "to adopt the Constitution and laws of any one of these States." This was the initial point—laying the foundation for the expression of the people, in a definite form, touching the government of their choice. I think it most significant that it was also provided, by the same article, "that such laws nevertheless shall be subject to alteration by their ordinary Legislature." "The free males (citizens of the Territory) of full age" were invited to meet together, "for the purpose of establishing a temporary Government." Congress did not undertake to *grant* authority to the people to do this. They were invited to exercise their rights as citizens, and were told that, after establishing a temporary Government, the whole responsibility of its maintenance rested upon themselves. It was a matter for them to manage. The laws of all the original States authorized the election of a Legislature by the people. The new States were placed upon a footing of equality with the old. I care not by what name you choose to designate the exercise of popular rights, such as were conceded to the people of the Territories or new States by Mr. Jefferson's scheme. It is enough for me to know that in respect to *all* matters of local concern, the Congress of the Confederation regarded every political community as endowed, not by virtue of authority granted by the Federal Legislature, but by virtue of their inherent rights as citizens of the United States, with the powers of self-government.

I now propose to consult the action of Congress, under the Federal Constitution, to see if the new States or Territories were recognized as having authority over the subject of slavery. I understand, of course, that it is maintained by Mr. Davis, and his slave-code associates in the Senate, that the Territories have no authority whatever to establish, abolish, or prohibit slavery therein. They denounce the doctrine not only as a monstrous heresy, but as one of the inventions of modern Abolitionism. I have a mischievous satisfaction, I had almost said, in calling your attention to what is known as the fugitive-slave act of 1793, approved the 12th of February. The third section of that act is in these words:

"*And be it also enacted*, That where a person held to labor, in any of the United States, or in either of the Territories on the north-west or south of the river Ohio, *under the laws thereof*, shall escape into any other of the said States or Territories, the person to whom such labor or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labor, and to take him or her before any judge of the Circuit or District Courts of the United States, residing or being within the State, or before any magistrate of a county, city, or town corporate wherein such seizure or arrest shall be made, upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit, taken before and certified by a magistrate of any such State or Territory, that the person so seized or arrested doth, under the laws of the *State or Territory* from which he or she fled, owe service or labor to the person claiming him or her, it shall be the duty

of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing such fugitive from labor to the State or Territory from which he or she fled."

This act, it will be remembered, was passed only nine years after the adoption of the scheme referred to for the government of the Territories. It expressly declares "that when a person held to labor, in any of the United States, or in either of the Territories on the north-west or south of the river Ohio, *under the laws thereof*, shall escape," he shall be delivered up. I take it for granted, it will be conceded at least, after reading this section, that the Government of 1793, with General Washington at its head, did not understand that the new States or Territories were prohibited by the Constitution from establishing or prohibiting slavery. I think equally clear, for the same reason, that it was not then understood that Congress possessed jurisdiction over the interests of slavery in the Territories. The certificate of the judge or magistrate contemplated by the act of 1793 is this: "That the person seized or arrested doth, under the *laws of the State or Territory* from which he or she fled, owe service." This is very plain, unambiguous language. It admits of but one construction, that in the view of the Executive, Senate, and House of Representatives, in 1793, slavery might exist under the laws of the Territorial Governments then organized north-west and south of the river Ohio. I do not refer to this act as a constitutional authority, and claim the right of Territorial Governments, under it, to establish or prohibit slavery. It is the judgment of Congress and of Gen. Washington, nevertheless, that slave property, like every other species of property, is subject to the exclusive control of the people of each organized community, under the Government of the Union. It is a vindication, by most respectable witnesses, of the doctrines of popular sovereignty, or squatter sovereignty, or whatever you may call the government of the people. The act of 1793 was a direct out-birth of the Territorial scheme of 1784. It is the construction of the Constitution by two of the departments of the federal system, touching the powers of Congress and of the new States over the interests of slavery; for if the latter have jurisdiction of it to the extent of making it legal within their respective limits, Congress has no other authority over it, except that which is given under the fugitive clause. I do not maintain that an act of Congress is to be received as conclusive authority by which the constitutionality or unconstitutionality of a measure can be determined. We have had too much of this kind of spurious reasoning, both in and out of the federal capital. The Missouri Compromise law has been again and again defended on this basis. Nevertheless the act of 1793 was the production of a patriotic, honest, and considerate age. Its enactment preceded all excitement on the subject of slavery. It was sanctioned anterior to the organization of sectional parties, when slavery existed in nearly all the original States. It followed, as a species of necessity, the fugitive clause in the Constitution itself. It is fairly the construction of that compact by the legislature which passed it, a legislature composed largely of the members

of the Constitutional Convention, and Gen. Washington, who approved it, acknowledging the authority of the Territories to establish slavery within their respective jurisdictions.

I see no just ground for the repeal of the Missouri Compromise, except that of its unconstitutionality. If Congress had *jurisdiction* of the subject matter of slavery, its right to prohibit slavery is clear and unquestionable. The policy of creating two governments in fact, one for the North, where slavery was prohibited, and another for the South, where it was not prohibited, such as were created by the Missouri law, is another question. I am not satisfied, however, to condemn the policy of such legislation. I justify its repeal on the ground that it was wholly without constitutional warrant. The argument, however, that sustains the resolutions of Mr. Davis, can not fail to condemn the repeal of the act of 1820. I think it fair to apply the act of 1793 to the whole case. It is the first exposition by Congress of the powers of that body in respect to slavery, conceding the authority of the Territories to exercise exclusive jurisdiction over it within their limits.

I confess I am somewhat curious to learn what may be your opinions of this act, and what weight or authority you will think it entitled to, as the voice of Congress touching the rights of Kansas and Nebraska, for instance, to exercise over slavery unrestricted government.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER FIVE.

MONTGOMERY, Ala., August 30, 1860.

I referred, in a previous letter, to the decision of the Supreme Court in the case of Dred Scott, maintaining, on the authority of that decision, the principle of the equality of the States and Territories over persons and property. I propose to show a little of the process by which the public mind has been led into the belief that the Court held any different doctrines. It will be remembered that Mr. Buchanan, in his first annual message, declared that slavery existed in the Territories by virtue of the Federal Constitution. This proclamation was only a weak effort to cover up the blunders and crimes of his Administration in connection with the affairs of Kansas.

Mr. Walker had been appointed Governor of that Territory under a widely different reading of the law. He was chosen as a representative man, that his high public character might be used by Mr. Buchanan to prove to the country the sincere determination of the Administration to carry out the great principles of popular rights, upon which the battle

of 1856 was fought and won. He was sent to Kansas instructed to proclaim to the people the principles of self-government—to tell them that slavery and every other matter of domestic interest were legal subjects of their control. Mr. Walker had executed his mission with singular energy, ability, and fidelity. He carried with him not only the authority of the President to do and say what was said and done under his government of the Territory, but was continually enjoined by letters from "the old functionary," to be ever vigilant and active in doing his work, and to let the world know all about it. The success of Gov. Walker in the line of his duty, was relied upon to convince the country of the good faith of the Administration in carrying out the principles of the Cincinnati platform—principles which Mr. Buchanan had declared a year before "as ancient as the principles of free government itself." I do not undertake to say positively how it happened that the President, early in the fall of 1857, came to the conclusion, that these "ancient principles," which he had pledged his faith to carry out in the event of his election, were in direct conflict with the provisions of the Federal Consuitution! That great compact had, in his judgment, totally condemned the ancient "principles of free government." Public rumor has credited Mr. Buchanan's sudden illumination upon this point to Col. Jefferson Davis, and a few other planetary stars of the Senate, whose effulgence is all thrown upon those patriotic laborers in the political vineyard, who are engaged in the great work of merging the Federal Government in the institution of slavery. At all events, it is well known that the "old public functionary," early in the fall of 1857, capitulated to Col. Davis and his Houmas associates. His principles, his pledges, and his faith, were surrendered up with admirable indifference. Never was there a man who had less sacrifices to make in giving up the position of a constitutional Chief Magistrate for that of driveling political pettifogger. The atmosphere of the Presidency was not congenial to his nature. He had been formed for a lower sphere. He is now more at home in the little family of Southern extremists and Northern parasites. Under their direction he abandoned Mr. Walker and all the principles, pledges, and men of the canvass which elected him. He went out as naked as the fame of Judas; not an obligation linked him to the past; not an emotion disturbed his equanimity. In this frame of mind he proclaimed to the country that slavery "exists in the Territories by virtue of the Federal Constitution"—that it "exists in Kansas as it exists in Georgia and North Carolina." This remarkable fabric of constitutional law was constructed, so Mr. Buchanan said, on the judgment of the Supreme Court in the case of Dred Scott. He followed it up by hounding every man in the Government who did not assent to it as an article of political faith.

Now, in truth, as I have shown in a previous letter, the Court never sanctioned any such doctrine; it is all Mr. Buchanan's doctrine—Mr. Buchanan's law. All the credit of its announcement is due to him; all the discredit which has fallen upon the judiciary, in consequence of such announcement, is due to him. No such principle is embodied in the Dred Scott case. In the course of the argument, the Court found it

necessary to name the various subjects, which the Constitution had forbidden Congress to legislate upon, and expressed the inevitable conclusion, that Territorial Legislatures are, of course, equally powerless over the particular subjects named; that Congress, in other words, could not delegate jurisdiction over matters embraced in the prohibitory clauses. Slavery is not named in these clauses. Yet, Mr. Buchanan seized upon the commentaries of the Court touching the prohibited powers, declared slavery to be one of them, and leaped off to the conclusion that slavery, by the decision of the Court, is one of the subjects over which the Territories have no jurisdiction. Having attained this point, it was an easy matter to couple it to another which the Court did decide, that slaves are property, like any other property. The conclusion from these false premises is, that the local Legislatures having been prohibited from creating or abolishing slavery, it is the right of any citizen to take his slaves to a Territory, and hold them as such, in defiance of the will of the people, and of the local law. All this tangled reasoning is exploded by a simple reference to the prohibitory clauses of the Constitution. Slavery is not one of them. Nor is it amongst the delegated powers; it is one of the interests reserved to the States and the people. The local Legislatures may, therefore, take jurisdiction of it. It belongs exclusively to the people, by virtue of their inherent right to regulate their own internal polity and Government.

But this principle is not acceptable to the military ideas of Col. Davis. It is equally unacceptable to Mr. Seward, the head of the opposite extreme in American politics. Mr. Breckinridge and Mr. Lincoln—representing these political agitators, these disturbers of the peace of the country—demand of the people the enlargement of the powers of Congress—one proposing to strengthen, expand, and consolidate the interests of slavery, in contempt of the will of the people; the other proposing to wield the powers of the Federal Government to limit, restrict, and abolish that relation in all the Territories. The one would create slavery by Federal laws where the people do not want it; the other would prohibit or abolish it where the people do want it. They both agree that Congress is the most reliable power, and the only power, which can be wielded to defeat the will of the people. They have taken an appeal from the latter to the former. They denounce the exercise of popular rights as agrarian and revolutionary—as one of the diseases of free Governments. They cast over the people the shadows of that great central power at Washington; that power which, in its nature, is like that of all other great Governments, haughty, dictatorial, self-opinionated, and tyrannical. I have no surplus belief to invest in the superior wisdom, integrity, and patriotism of the Federal over the worst-managed Territorial Government now organized; I am not inclined, therefore, to become a party to the effort to disfranchise the people of the Territories, and place their affairs in the hands of Congress. Nearly one hundred millions of dollars are annually required to administer the government of the Union. And what is this expensive luxury? To regulate commerce with foreign nations; to collect the revenues; to coin money; to carry on the post-office estab-

lishment; to control the Indian tribes; to maintain our diplomatic service; to dispose of the public lands. These are the chief subjects of legitimate government. Then comes the great work of speculation and peculation; the construction of useless but costly buildings; the maintenance of the smallest navy at the greatest possible expense; of an army, which, if made up every year by the purchase of negroes at a thousand dollars per head, and supported as negroes are supported, would save a great deal of money to the Treasury. I cannot think that such a Government should be entrusted with any additional powers; and I feel sure that it should not be permitted to disfranchise the people of the Territories, on the plea that their affairs will be better managed at Washington.

But let it be conceded, for the sake of the argument, that the Supreme Court, in the Dred Scott case, decided that the Territorial Governments have no right to establish or abolish slavery, and that it is the right of Congress to take jurisdiction of the subject therein. What then? The Executive, Legislative and Judicial departments, under the Federal Constitution, are co-ordinate and co-equal. If it is within the authority of the Court to enlarge the powers of Congress, it is certainly within the authority of Congress to restrict or enlarge the powers of the Judiciary. The latter "extend to all cases in law and equity arising under the Constitution and laws of the United States," to treaties, to ambassadors, to cases of admiralty and maritime jurisdiction, and to "controversies" "between States," "between" a State and a citizen of of another State, and "between" citizens of different States. Let me suppose that Congress, in its wisdom, should confer upon the Judiciary, in addition to these powers, the right to make laws in certain cases. Would such an act supersede the Constitution? Would it in a legal sense enlarge the powers of the Court? Neither Congress, the Executive, nor the Judiciary can change or modify the organic law. That law is the soul of the Government. The authority of each of the three great departments is defined by it; each is made the exclusive judge of the Constitution in respect to its functions and duties. The Judicial branch was created not to sit in judgment upon the right of the other two departments to do this or that, but to determine "controversies between" State and State, and "between" a citizen and a State, and "between" citizens of different States. I remain, most respectfully,

NATHANIEL MACON.

NUMBER SIX.

MONTGOMERY, Ala., Aug. 31, 1860.

I think I have shown clearly enough that, under the Government of the Confederation, and under the Government of the Constitution, the people of the Territories and the people of the States, in respect to local affairs, including the management of slavery, are placed upon a footing

of absolute equality. I think it perfectly manifest, indeed, that the people of the Territories may establish or abolish slavery at will. I purposely refrain from more than a passing allusion to the action of parties, in later years, upon this question, because such action carries with it little or no authority. For a quarter of a century, or more, the "slavery question" has been a bone of contention between two ravenous dogs. It has been a controversy of passion and power, not of reflection and reason. The Democracy, in 1848, under the leadership of Gen. Cass, entered into solemn agreement with the country to enforce the principle of local self-government.

Two years later, such was its force that, in a struggle involving this question alone, party lines were for the day almost wholly obliterated, and the principle was adopted by act of Congress. In 1852, the Democratic and Whig National Conventions at Baltimore incorporated it in their respective platforms. In 1854, by what is called the Kansas-Nebraska act, it was not only reaffirmed, but the Missouri Compromise, which was Congressional intervention, was repealed by words, and all questions affecting slavery, the only point in real controversy, were referred to the courts for determination. By this act, the right of Congress to legislate for the Territories was both directly and indirectly denounced. In order to inaugurate the principle of non-intervention by Congress, and render it effective in the hands of the people, an appeal was given from the decisions of the Territorial courts to the Supreme Court of the United States. The legislation of 1854 thus pledged the faith of the country to the doctrines of local self-government.

Two years later, Mr. Buchanan was elected to the Presidency, almost exclusively on the merits of this doctrine. To render the record complete, I have only to call your attention to the fact that, within ten years from the passage of the Compromise Measures, the Whig party has been broken up, the Democratic party South has repudiated its pledges of 1848, '50, '52, '54, and '56, its Northern wing alone remaining faithful to the effort to localize the subject of slavery; and a powerful sectional organization is now in the field, with strong hopes of controlling the Executive Government for the next four years. This latter organization sprung into existence almost wholly through the bad faith *of the extreme* men of the South. Good faith, on their part to the principles of the Compromise Measures, and the Territorial legislation of 1854, would have given to the National Democracy undisputed sway throughout the Union.

By an honest adherence to the effort to localize the interests of slavery, to refer the question of its existence to the people to be affected by it—a policy more vitally important to the South than the North—the Democratic party to-day would have commanded supreme control over the great States of New York, Pennsylvania, and Ohio, and a like ascendancy throughout the Union. But, I repeat, I think it unprofitable even to refer to the past action of parties. There is little virtue in their proceedings. Want of faith is want of power. Those who will not fulfil their obligations are not to be employed as guides. The Breckinridge movement was an original undertaking. It proposed to give

supreme control to slavery in the administration of the Federal Government, or to force the slave States, in the event of failure, out of the Union. It rests upon no precedent, seeks the sanction of no law, and depends for success upon the complete disruption of the Democratic party. It is a disunion movement *per se*. This brings me at once to express my own conviction that *the success of slavery, the successful management of the black race, is impossible out of the Union*. It is the Union that gives to slavery perfect security, to slaves their present high value, and to slave labor its largest measure of success.

It is the moral power of the Union—the moral power of the most successful Government in the world—which upholds slavery. It has arrayed against it all the great States of civilization. It has arrayed against it almost the united moral sentiment of mankind. It has arrayed against it a vigilant fanaticism, bedecked with orders of nobility, and sustained by boundless wealth. It has arrayed against it the universal teachings of Christianity, the instincts of benevolence and philanthropy, and, above all, the spirit of the age, which presses heavily upon every species of despotism, and seeks to maintain, everywhere, the cause of free government.

The slave States, by the compact of the Union, have secured to themselves the political support of the free States, in behalf of slavery. The latter are identified with it through every channel of our foreign and domestic trade. The success of the Union, and all the power it has achieved in the eyes of the world, are justly regarded as the *defensive works of American Slavery*. The Federal Government was formed upon the basis of its existence as an element of labor. It has contributed largely to the common prosperity. Its products have done much not only to build up our foreign commerce but to control the political Governments of the world. It has performed more than its share of that great labor which has enriched the nation, enlarged the sphere of its political influence abroad, and rendered it independent and respectable at home. Nevertheless, the Union has done more for slavery than slavery has done for the Union. The logical work of the opponents of slavery is the destruction of the Government. It is the latter that gives it vigor, power, and security. It is the Union which covers it with that kind of shield which protects it alike from enemies within and without. I see no possible condition of things by which slavery can be benefitted by physical conflict. Take away from it its moral support, remove the restraints imposed upon its opponents by the Federal Constitution, let it stand up by its own inherent forces, make its own defences, justify its own life and character, and it will then be seen how vastly it has overrated its strength, and underrated the strength—even the moral strength—of its opponents. It will then be seen that its life and security have been imparted to it almost wholly by the moral power of the Federal Union; and that in beating down the latter it is doing more for Abolitionism, in a single Presidential contest, than its combined enemies could otherwise have accomplished in a century.

The destruction of the Government means general disorder, disaster, and emancipation. Slavery is a fortress having no national defences of

its own. It can be approached only through the free States. The hands of the latter are tied by the national compact. All the memories and glories of the past—every battle fought, and every victory won—are so many guarantees to the slave States that their brethren of the North will stand by and protect them against the enemies of slavery. So long as the voice of each local community is permitted to determine the question of its establishment or exclusion; so long as it is made a matter of free choice with the people to ordain or reject it; so long as it is excluded from the halls of Congress, and kept out of the hands of the political jugglers, who would play with it as a stake—so long, and no longer, will it be safe. Those, then, who seek to impart to slavery the attributes of nationality—to give it a Federal existence, voice and tongue—are its enemies, and the enemies of the Union. Let it alone where it was originally placed is the dictate alike of patriotism and of order.—Leave it to the people. Let them have it who will, and let them reject it who do not want it. Keep it out of the hands of Congress; rescue it from the intrigues, dishonesty, and management of Federal politics.

I am amazed when I reflect that while slavery is a matter of labor and profit alone, those interested in it should seek to connect it with politics, should thrust it into the foreground in every political controversy, should wield the very security, success, and value which have been imparted to it chiefly by the Government of the Union, and the interest even which others have acquired in its existence and maintenance as weapons of power and intimidation by which it is sought to deprive the people of the Territories of their right to control it. The highest protection of slavery is to be secured by honesty and good faith in the administration and maintenance of the Union. The doctrine of Congressional jurisdiction and government of it is essentially an Abolition tenet. It is part of the Exeter Hall programme. It was Mr. Yancey's plan in 1859; and I believe it is now the plan of Mr. Yancey and his associate secessionists. It is in this view that I condemn the Breckinridge movement, because it is thus playing into the hands of the Abolitionists, aiding them to dissolve the Union.

What slavery has most to fear is physical conflict. Shielded by the Federal Union, it can well afford to meet the criticism of the world. Its products fairly justify its existence. It is able to buy up its opponents with the profits of trade, while its policy is vindicated by the character of the great Government under which it exists. Dissolve that Government, through the machinations and bad faith of slaveholders, and you will have arrayed against slavery, by a natural law, not only the people of the free States, but in a little time also the people of the northern or border slave States. The latter, at first, will have to meet the brunt of the conflict. This may not assume the character of open warfare, but it will, nevertheless, be a conflict of opinions bearing directly upon the institution of slavery. Thus endangered, it will recede first from the frontiers, and later from the entire border slave States. It is doubtful indeed if this movement of slavery to the South not will be precipitated by the greater profits of its labor there, independent of

all matters affecting its safety where it now is. Under the Union, I am satisfied that the united hostility of the world to negro slavery, armed as it is with its newspaper press, and led on by its parliamentary and Congressional orators, is by no means capable of making such powerful drafts upon the slaves of the northern or border slave States as the cotton-fields of Mississippi, Louisiana, Alabama, Texas, and Arkansas. The profits of its labor in the latter not only draw to them the slaves of the former, but this draft is already so potential and irresistible as to constitute, even now, the chief source of the inhumanity of slavery. The ear is pained every day by recitals of families separated by this powerful governor of human life—self-interest.

The movement of slavery south in this way has a double motive power —the profits of its labor in the cotton States, and the poverty of its labor in the grain States. The latter causes frequent individual embarrassment, and this, added to natural efforts to improve the condition of persons holding slaves, is carrying thousands every year to the extreme South. Superadd to these operating causes the effects of a dissolution of the Union, and the insecurity that will attend a revulsion so terrible and disastrous to the North and the South, and what assurance has slavery that it will be able to maintain itself in the border slave States? What assurance have the cotton States that they will be able to secure and hold the alliance of Virginia, Maryland, Kentucky, and Missouri? I indulge in these speculations in order to show the folly of the effort which is being made by Mr. Breckinridge and his friends to procure for slavery a Federal existence and character—to show the magnitude of the evils which are sure to follow the success of that fatal programme, by which it is proposed to take slavery out of the hands of the people, and make it the creature of Federal policy and management.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER SEVEN.

MONTGOMERY, Ala., September 1, 1860.

I would again call your attention, for a moment, to the subject of American slavery. You and I regard it, under the circumstances, as perfectly defensible and perfectly just. We understand, at the same time, that this is not the opinion of the world, for which, in charity, we ought to entertain some respect. Every people are presumed to have more or less radical faults; it is barely possible that we may not be altogether free of them. There are diseases in every body, impurities

in every element, errors in every system. After a careful survey of the condition of the Northern States of the Union, I am perfectly satisfied that, even there, much remains to be done in order to fill the measure of human happiness, and complete the circuit of popular education and enlightenment. I admit the greatness of the free States. They have accomplished more in laying the solid foundations of prosperous and successful industry, in the development of intellect, and in the arts and comforts of life, than has fallen to the lot, perhaps, of any other people. I think it would add greatly to the harmony and beauty of their society, nevertheless, if they would exercise more forbearance and charity towards the people and institutions of the slave States. I must not be understood as soliciting the enlargement of these Christian gifts for the particular benefit of the South; if they are not demanded by your people, their absence can surely be endured by ours. We have the whole responsibility of slavery.

The black race is with us. If slavery is an evil, it is ours. I know that the great mass of society condemn it, and I confess that I am more or less embarrassed when I reflect that this is the judgment of nearly all enlightened States, and it does not relieve me to consider that the people who maintain it, excepting in this country, are many points below the medium degree in human progress, government, and civilization; that they are wanting in Christian charity, in public education, in the genius of discovery, in private enterprise, and in free institutions. All this is cogent testimony against slavery, so far as the good of the white race is concerned, and places it in the power of its opponents to say that the exception we present is due to peculiar natural causes, to soils and climates, and the world's consumption of our products. It is true, we have a great monopoly in the growth and markets of cotton, sugar, rice, tobacco, and hemp. This monopoly has made slavery vastly profitable. It has gone very far, I apprehend, in causing the people interested in it, not only to cherish it as a special gift, but to regard it as one of the pillars of the State. In this way it has been thrust into Congress and advertised to the world, not only as the corner-stone and foundation of the national prosperity, but as the very soul of our political life. Not content that it should perform its great office of labor, it has been elevated to be a political machine, as Mr. Hamilton called the old bank. All this I admit is perversion and usurpation. Slavery is, as I have said, justifiable, in this country, on the ground of the existence here of two unequal races which cannot otherwise live together in harmony. The weaker party must be protected, and it can be secured only, as we think, through the relation of master and servant. This may grate harshly upon the ears of many who do not reflect upon the greater evils of any other scheme except that of general emancipation and transportation, which is utterly impracticable. In this view the *continuance* of slavery is demanded by the interest, welfare, and happiness of both races. I have thus frankly stated the conditions upon which we are slaveholders, and the circumstances which, in my judgment, render it necessary that we should remain slaveholders. It is the individual protection of the black race, by the whites, secured by the only process by

which that end can be attained. I am sensible that a system which, thus by force, exacts from one class of persons not only involuntary servitude, but, by the operation of law, transforms them into chattels, should be closely watched and guarded. The enlightenment, liberality, and humanity of slaveholders should always characterize their dominion over the blacks. It is a relation to be entrusted only to each local Government. More than that of anything else which is the subject of legislation, it is a matter of domestic concern. It is almost exclusively, perhaps it ought to be universally, patriarchal in its character. The Federal Government cannot touch it without inflicting upon it a fatal injury. It exists under that Government, not by virtue of its laws, but by virtue of the laws of the States. Three-quarters of a century ago the Union became its shield and defence. It was then recognized by nearly all the great Powers, by England, France, Spain, Portugal, and Russia. Its enemies were few and insignificant. Since that period, the judgment of nearly all Christendom has changed from pro to anti-slavery, the industry of this country has been developed, so that now, that which was only a nominal has become a real shield, and a defence against the assaults of Abolitionism, and equally the pledge of, and the security for, the common good of the whole American people. The North, indeed, are quite as much interested in slavery as the South, and are equally, if not more, interested in maintaining the existing Government. The two regions, menaced by agitators and counterfeit philanthropists, have only *one grand triumph* to effect, in order to secure the peace of the country for all coming time; *to commit slavery exclusively to the hands of the people.*

It is a great error to suppose, even if the authority existed, that there is power enough in the Federal Government to maintain it, in opposition to local public sentiment. The people of the States are radically divided in opinion concerning it. This difference of opinion is perfectly legitimate and harmless in Federal affairs, for there is no Federal slavery. So long as it is maintained at home, and the Federal jurisdiction is excluded, except for extradition purposes, it is perfectly safe. It is thus protected by a homogeneous principle. As an exotic it can never live in peace; and I think it clear that the South have too much wisdom to seek to place it where it is a mere bone of contention.

These views have led me to regard the nomination and support of Mr. Breckinridge, by a large class of slaveholders, as an act of political suicide, which I cannot reconcile with the instincts of self-preservation. It is proposed to inaugurate outright a party based upon the principle that slavery is entitled to a Federal, as well as State existence. It is to be introduced into Congress, and the National Government is to become its progenitor and guardian over all the embryo States of the Union. The success of this conspiracy is to be held up as the political conquest of the slave States, the last act in the "revolution" of public sentiment, to which Senator Hunter referred the other day, in an address to his constituents. And what is this political achievement which is to crown the South with the insignia of triumph, and the benefits of which are to fall equally upon the Abolitionists and Disunionists? It

is the disfranchisement of the people of seven organized American Governments, their territory to be set apart, as a species of public common, for the joint occupation of slaveholders, their slaves, and non-slaveholders, in contempt of the will of the inhabitants, and the whole to be governed by Congress. This is what Mr. Hunter facetiously calls securing an equality of rights. These rights are secured by wresting them, by the hand of power, from seven States. Now, what is the profit and loss account of this Vandal scheme, this piratical robbing exploit of a few beggarly politicians, North and South, who keep their places by fomenting quarrels between the two sections? Will it extend slavery? Will it strengthen the South? Will it promote the interests of the North? Will it give peace to the country? It will be an act of power contradistinguished from an act of law, and lead to an endless war of the sections. It will not add a foot to the existing territory which now recognizes slavery; and it will not prevent the establishment of slavery in a foot of territory within the jurisdiction of the Union. It will be the triumph of political trimmers, and nothing else.

Let me say to you that, in aiding to build up a party upon this basis, you are aiding the Abolitionists, offending every just sentiment of national patriotism, outraging the dictates of honesty and fair dealing, and undermining the Union in such manner as to place it in the power of mischievous demagogues to apply the fatal spark. Even conceding the premises of the conspirators, do you think it sound policy that they should collect the materials to blow up their own works, on no better plea than that they are theirs? If it is their right that Congress should intervene to protect slavery anywhere, I take it for granted, nevertheless, that they expeet no practical benefits to accrue to them from the action of that body. If it should become the settled law of the Republic, that slavery exists in all the States, it would remain, in point of fact, just where it now is. It would still exist solely by virtue of local laws; it would still be excluded from those States where it is not supported by public opinion. The utmost that they would have accomplished would be a barren political triumph—the enunciation and maintenance of a theory without a particle of practical sense in it. I am wrong; they would have arrayed against them and against *their* slavery an indignant public sentiment, outraged in the belief that they had deliberately resolved to avail themselves of the profits of slave labor, and the interest which the free States are supposed to have in such profits, to give them a controlling political power in the nation. Knowing that under the laws of population they were losing their numerical force in the two houses of Congress, they determined at once to place the country in such a position as to compel the people to give them dominion or give up the Union. This is the philosophy of the Breckinridge nomination. It is a disunion, anti-slavery movement, and you who are for the Union, and maintain the justice of slavery, are one of its earliest volunteer endorsers.

The total exclusion of Congress from all right of control over slavery in the States and Territories, the equality of the latter and the former

in respect to all matters of domestic interest, are the doctrines of the Constitution. The free States are not required, and ought not to be required, to render it special support, or share in the responsibility of its existence. They have undertaken, by solemn political covenants, *to let it alone*, to leave it to the exclusive government of such local communities as may, by their suffrage, adopt it. This is the philosophy of non-intervention.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER EIGHT.

MONTGOMERY, Ala., September 3, 1860.

Nothing is clearer to my mind than that the law of the Union and the laws of the States, guarantee to the people of every organized government in this country the exclusive right to regulate and control their own internal polity in their own way. This principle is equally reasonable and practical. It is in harmony with our representative system. It recognizes the right of the people to govern themselves subject to the general laws of the republic. The doctrine of Congressional intervention with the new States is the doctrine of centralization. Whatever is done to build up the central power must of necessity weaken and enervate the State power. What is added to the former must be taken from the latter. If you concede, however, the right of Congress to legislate on the subject of slavery, you must base the exercise of this right on some grant contained in the Constitution. This grant may be general or special. If it is general, it can not be restricted to this or that portion of the Federal jurisdiction. If it is special, it is of course subject to its own defined limits. A special grant is found giving Congress exclusive legislative authority over the District of Columbia; over no other organized community is any such authority delegated. I propose an analysis of the Federal compact with a view of enabling the reader to comprehend my exact views touching this matter.

The Constitution, as I read it, is properly divided into three parts:

I. The powers delegated; or what the United States may do.

II. The powers prohibited; or what the United States and the States respectively shall not do; and

III. "The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Under this classification we have only to look at the delegated powers to see that no authority is thereby granted to Congress over the affairs

of Territorial communities. Not a word is said of slavery, of course. Not a word is said by which it can be inferred that the subject of legislation by Congress over the new States, was ever discussed in the Federal convention. The utmost that was proposed is embraced in Mr. Madison's proposition to give Congress the right to authorize "temporary governments." That proposition was reduced to the right to admit new States into the Union.

We then refer to the forbidden powers and find that the subject of slavery is not named.

Having gone through with this simple investigation, guided alone by the provisions of the organic law, we are forced to the conclusion that slavery is one of the interests "reserved to the States respectively or to the people." But it is contended that the "States" here named, does not embrace Territorial governments. This objection can be answered only by reference to the early history of the Union. We ought to know, in order to come to a correct judgment upon this matter, by what name American governments were called, from 1784 to 1794. The revolution commenced with thirteen organized Colonies, and ended by the recognized existence of thirteen "States." About a year after the peace, the Congress of the Confederation authorized the formation, outside of the limits of the original States, of certain other "States" or "new States," as they were called. This designation continued till the year 1793, when Congress called the "new States," "Territories." The substitution of the word "Territory" for "State" was wisely made. It is much easier to distinguish the governments in the Union and the governments out of the Union, by calling the one "States" and the other "Territories." But this very proper designation, it seems, was not thought of till the year 1793. The legislation of 1784 distinctly and appropriately fixes the *status* of the temporary governments as "new States." It contemplates that the people of certain localities may organize temporary governments, and form "permanent constitutions and State governments" when they shall have twenty thousand inhabitants; and that they shall be entitled to admission into the Union when they shall have a populatien equal to the least numerous of the original States. This legislation clearly contemplates the existence of States *out* of the Union. Five years later the Constitution was adopted. That compact, following the legislation of 1784, provides that Congress shall have power to admit "*new States*" into the Union. They are designated as "new States;" their character is thus fixed by the Constitution itself. It follows that the powers "reserved to the States respectively or to the people," embrace every organized government under the government of the Union. I can imagine nothing more absurd than the assertion that this clause of the Constitution does not extend to the Territories. When that compact was framed, there were new and old States. It provides for the admission of the former into the Union. In defining the powers of Congress, the Executive, and the Judiciary, it says what these three departments may do; what they shall not do; and declares expressly that all *other* powers are reserved to the "States respectively or to the people." This reservation, it is manifest, is appli-

cable to all the then existing "States," and to such others as might subsequently be organized.

Now I admit, if it could be shown that the "new States" were originally organized without legislative authority, depending entirely upon Congress and the President for laws, and the execution thereof, there might, in that case, be some doubt of the meaning of the clause reserving to the "States respectively or to the people" the powers not delegated nor prohibited. But, on the other hand, it is well known that the "new States" were organized upon the principles of self-government; that there was no claim set up of the imperial authority of Congress over them. They had been initiated by the "free males of full age," who subsequently maintained and conducted them, without any intervention by Congress in respect to local affairs. The fugitive act of 1793, by which the right of the old and new States to establish slavery is distinctly recognized, followed the legislation of 1784, and is fairly quoted as the interpretation, by Congress and Gen. Washington's Cabinet, of the Federal Constitution, in regard to the equality of the old and new States, touching the interests of slavery. It is worthy of observation, that the advocates of Congressional power should seek to maintain their theory of "imperial government" over the new States without even a reference to the Constitution itself, by which all authority is delegated, forbidden, or reserved. Mr. Hunter rests his pretensions on what he calls "the equality of the States" as landed proprietors, and maintains that it is the right of the people of the South, on this basis, "to colonize the Territories, and to take with them their institutions." The Supreme Court, in the case of Dred Scott, expressly say, that the Territories are not colonies to be governed by the arbitrary will of Congress; that the powers of Congress are distinctly defined by the Constitution, and that its authority is limited to the right to admit new States into the Union. Mr. Hunter, with the chart before him, might, at least, have referred to this grant and argued from it the right of Congress to exercise jurisdiction over the subject of slavery. At all events, he might have avoided the use of the word "colonize," and I think it will add little to his reputation as a student, and much less a lawyer, that he was able to reach the conclusion that the people of the South have a right, not only to "colonize" the Territories, but to "carry with them their institutions." To carry with them their institutions, under this theory, is necessary of course to secure "the equality of the States." What becomes of the right of Congress when Mr. Hunter shall have established the superior right of the people of the States to carry with them to the Territories their institutions? What necessity exists for slavery legislation, by Congress, if Mr. Hunter's constituents, for instance, can carry with them to Kansas the slavery laws or "institutions" of Virginia? This rule, based upon "equality," must have a wider range, I think, than that which Mr. Hunter assigns it. If it is the right of the people of the South to export their institutions, I do not exactly perceive how the same right is to be denied to the people of the North?

New York has prohibited slavery—this prohibition is one of the institutions of the State. It is a law of the State, and the man who opposes

slavery, under Mr. Hunter's interpretation, may go into the Territories and carry with him this law. Why not? Not only this particular law is liable to export, and enforcement in the Territories, but all other laws of the several States of the Union. The owner of liquor in New York may send it to Kansas and enforce his right to sell it, notwithstanding a citizen "squatter" of Massachusetts may object, under the prohibitory laws of that State, which he has imported. But I will not go farther in illustration of this beautiful and harmonious theory of Constitutional law. The subject is not altogether new. It was discussed ten years ago in the Senate; but then "the equality of the States," in the view of one party, gave Congress the exclusive right to legislate for the Territories, on the grant that "Congress shall have power to dispose of, and to make all needful rules and regulations respecting the Territory and *other* property *belonging* to the United States." The meaning of this grant was too obvious to admit of doubt; and so the advocates of "slavery colonization" adopted the present theory of carrying off to the Territories bodily such laws as might be necessary to maintain slavery. I think it was about the 12th of January, 1850, that Gen. Cass made his speech on the subject, in which he analyzed this pretension, and for a period silenced the opponents of his favorite scheme of "popular sovereignty." Mr. Davis, after the election of 1848, when Gen. Cass had again warmed his seat in the Senate, took an opportunity to assail the "Nicholson letter," and the discussion was continued, now and then, till the Session of 1850, when the General entered into an elaborate and formal defence of the doctrines of that letter, which were the doctrines of popular sovereignty. A large portion of this speech—I have not read it since about the time of its delivery—was devoted to a refutation of the theory now again brought forward, that, by virtue of the fact that the States are equal, and the proprietors of the Territories and *other* Federal property, "it is the right of the citizens of the States to 'colonize' them, and carry with them their institutions."

Gen. Cass, it will be remembered, though long engaged in the public service, had not, up to the close of his diplomatic career abroad, assumed a strictly partisan position. He had never, I believe, entered into the discussion of political topics. He was far more distinguished and accomplished in speculative literature, than subtle and learned in political economy and Constitutional law. His election to the Senate, after his return from France, was deprecated by his friends, on the ground that it would bring him into collision with such able Statesmen and tacticians as Webster, Clay, Calhoun and Benton—thus provoking unfavorable comparisons. I well recollect that the General's enemies looked upon his election to the Senate as the sure extinguisher of his Presidential chances. He had won some laurels in a controversy with Mr. Webster on the Search question, in which he occupied truly American ground.

The early portion of his Senatorial conduct was not marked with sufficient ultraism to elicit the approbation of many of his friends. It is alleged, probably with some truth, that he endorsed the first suggestion of the Wilmot Proviso. The turn of political affairs, however, soon led

him to take ground, no doubt with perfect sincerity, with the extremest Democratic sect, in return for which he was thoroughly abused by the opponents of Mr. Polk's administration. In the discussion of the Oregon boundary question, he planted himself upon the extreme line of 54° 40′, from which he retired after the ratification of Mr. Polk's Treaty.

The Wilmot proviso had become an article of faith in the old Whig organization. It followed the struggle on the right of petition. The South denounced it as unconstitutional—a palpable infraction of the rights of the States and the people of the Territories. Gen. Cass took early ground against it. He denied the authority of Congress to intervene. He maintained that slavery was a matter subject alone to the government of the Territories. He was denounced every where in the North as a *dough-face*, as moulded by the South, controlled by the South, and devoted to the South. His nomination in 1848 brought out his "Nicholson letter," in which he inaugurated the doctrine of popular sovereignty. This doctrine had a powerful effect. It proposed to take the question of slavery out of Congress and place it in the hands of the people. It was so satisfactory to Mr. Breckinridge as to compel him, it seems, to withdraw his allegiance from Gen. Taylor. Gen. Cass may be said to have started in political business on the capital of this "dogma," as Mr. Breckinridge now calls it. It led him directly, by the force of "inexorable logic," to declare the Missouri Compromise unconstitutional. That Compromise was the legal origination of sectional parties in the United States. It created, by Act of Congress, two governments, one for the North, where slavery was prohibited, and another for the South, where it was permitted.

It thus established, so far as an Act of Congress could effect it, a positive inequality between the two sections. The constitutional grant then relied upon to justify this legislation was the provision of the organic law giving Congress power "to *dispose* of, and make all needful rules and regulations respecting, the *Territory* and *other* property *belonging* to the United States." It will be remembered that the word territory, up to the year 1793, was used to designate *property*, and in no instance to designate a political community. This grant, in fact, made Congress the trustee to *dispose* of the public property, including the Territory "belonging" to the United States, and had no other meaning or purpose. The Wilmot Proviso and the Missouri Act were both justified on the above named constitutional provision. Neither had the least warrant from the organic law. The latter was by far the most mischievous work, because it recognized the existence of a legal North and a legal South, and gave to the arrangement, the sanction, to some extent, of the people of the North and the people of the South. The repeal of this Compromise, in 1854, was without a shadow of justification, if the power now claimed, to legislate on the subject of slavery in the Territories, is admitted. That repeal was effected by the almost unanimous vote of the South, and was heralded everywhere in the slave States, as the triumph of constitutional law over faction and fanaticism. During the existence of the old Whig party, and while it still preserved a national

character, the Missouri Act was treated as unconstitutional. The Compromise Measures of 1850 distinctly condemn and repudiate it. Two years later, when Gen. Scott was nominated, the principle of non-intervention by Congress was emphatically endorsed.

It is true, nevertheless, that in the ranks of the old Whig party, there was an anti-slavery element which did not assent to the Compromise of 1850, and which conducted the canvass of 1852, on the anti-slavery basis of the present Republican party. It was this element which rendered the disruption of the Whig organization inevitable. The repeal of the Missouri Act was seized upon as the occasion for disconnecting itself wholly from its Southern allies, and for the enunciation of the utmost doctrines of abolitionism.

I think it a remarkable coincidence, in the mysterious evolutions of American politics, that it is now found, that those who, about ten years ago, denounced the Wilmot Proviso, and the Missouri Compromise, as unconstitutional, denying wholly the jurisdiction of Congress over slavery, and those who sustained the Proviso and the act of 1820, should now be found laboring together, to maintain the right of Congress to legislate on the subject of slavery in the Territories. It is proper to say that these two factions have widely different purposes in view. The one proposes to limit, restrict or prohibit slavery; the other proposes to enlarge, expand and establish slavery. I take it for granted, however, that the principle involved is the same. The power to prohibit presupposes the legal jurisdiction of Congress over the subject, and carries with it the power to create or establish, as the power to establish or recognise the existence of slavery carries with it the right to abolish it. There is no special grant of authority in the Constitution. The right, if it exists, is deduced from the Federal system, and cannot, if jurisdiction is admitted at all, be restricted or limited except by the direction of Congress. I think I have shown that it is the grossest pretension, without a shadow of constitutional warrant and utterly subversive of the very character of the government. It is no ordinary offence in my judgment to exercise a power by Congress without the authority of the organic law; but when it is sought to be exercised, so as to disfranchise whole States—to deprive the people of half a dozen political communities of their rights of self-government, the example ought to be resisted without reference to its immediate practical effects. It is an act of subtle revolution, the more dangerous, because it is done by the recognised organs of the government.

It is no answer to this objection to say, that the subject matter of the present controversy is a mere abstraction. The question is not whether slavery shall or shall not exist in the Territories through the action of the Federal Government; it is whether Congress shall exercise unwarranted and revolutionary powers. It is the integrity of the general Government that we are called upon to maintain; to put down efforts at usurpation, to resist the enactment of laws by Congress which have no constitutional authority to justify them.

In point of fact, slavery itself is maintained wholly by interest. Where its labor can be made most profitable there it will go; where it

is unprofitable it will not go, and if it exists it will soon be transferred in obedience to this law. The Ordinance of 1787 prohibited it in the North Western Territory. Nobody can say that Ordinance *actually* kept slavery out of Ohio, Indiana, Illinois and other North Western States. The people could not make it profitable; in other words it could be made more profitable in producing cotton and other slave products. For instance let us suppose that fifty thousand Abolitionists shall occupy the cotton climate and soil of Texas: does any body doubt that they would soon become slaveholders? Would it be safe to anchor them to their philanthropy and trust them to resist the temptations of self interest? Let me test this:—Anti-slavery philanthropists are not numerous where it is the interest of the people to hold slaves; as pro-slavery opinions are not dominant where it is not the interest of the people to maintain slavery. I take it for granted, on this principle, that any number of the good people of Mississippi, if transferred to Nebraska, would soon give up all thought of maintaining slavery in that Territory.

It is thus seen that the question of the legal sanction of slavery must of necessity be determined by each local Government or people; and this fact is enough of itself to stamp a double condemnation upon the insane project of the disunionists to force from Congress the enactment of laws recognising slavery as the legal subject of Federal legislation.

I remain, most respectfully,

NATHANIEL MACON.

NUMBER NINE.

MONTGOMERY, Ala., October 5, 1860.

Since the completion of the preceding letters, the recent speech of Mr. Cushing at Bangor has been placed in my hands. It seems to me radically unfair and uncandid, if not a studied and labored effort to mislead the people on the subject of Federal and Territorial rights. I have selected a single extract which embodies so many errors as to justify the reader in condemning the whole speech. This extract is indeed the germ of the effort. Mr. Cushing thus lays down his premises:

"In the political theory of the United States, all acts pretending to have legal authority of whatsoever nature and wherever performed, must be tracable to a constitutional source, either of the United States or of one of the States. Hence the necessity, in the Territories, of some act or ordinance of Congress to institute government—I say the necessity of some ordinance or act of Congress; for persons and things in one of these Territories are not the subjects of any foreign government, like

the Canadas; they are not independent powers like Mexico; they are not citizens of, or within the jurisdiction of any one of the States; and, therefore, whilst in the territorial condition, they remain, of constitutional necessity, subject to the paramount jurisdiction of the Federal Government, the nature and extent of that jurisdiction and its limitations being defined by the Constitution of the United States."

Let us examine for a moment, the first sentence of this fundamental proposition. It must be trimmed down very near its heart before we shall be able to understand it. For instance, the acts of the Territories are not traceable to State Constitutions. By the Federal Constitution certain powers are delegated, certain others are prohibited, and then it is expressly provided that the powers not delegated nor prohibited are reserved "to the States respectively or to the people." I want to know how "acts" under the reserved powers are "traceable to a constitutional source"? If the States have no control of the Territories, and the Federal Constitution has delegated to Congress no right to legislate for them and has not prohibited them from the exercise of legislative power but has expressly reserved to the States respectively or to the people all powers not delegated nor prohibited, it follows that the Territories may exercise legal authority which is not "traceable to a constitutional source." But again. The people of the States exercise original power when they set aside their Constitutions and frame new ones in accordance with the popular will. In such cases their legal acts surely are traceable to no constitutional source. Mr. Cushing, I suppose, has overlooked the fact that in this country the sovereign power is not in Constitutions and Governments, but in the people. The latter do not derive their rights from organic laws. They create or ordain such laws. Their "legal acts," therefore, cannot be traced to a "constitutional source." Constitutions are not in any sense the "source" of legal authority. They are compacts governing Representatives, prescribed by the people for their own security.

In speaking of the Territories Gen. Cushing says, they "are not the subjects of any foreign Government, like the Canadas; they are not independent powers like Mexico; they are not citizens of, or within the jurisdiction of any one of the States; and, therefore, whilst in the territorial condition, they remain, of *constitutional necessity*, subject to the paramount jurisdiction of the Federal Government."

I do not perceive, perhaps, the force of Gen. Cushing's argument upon this latter point. But the language is this: the Territories are not dependent upon the Federal Government as the Canadas are dependent upon Great Britain; and yet the Territories are *subject* to the "paramount authority of the Federal Constitution." How are they subject to such "paramount authority" if they are not dependent? And how are they unlike the Canadas if they are dependent or subject to such authority? But again. Gen. Cushing declares that all acts pretending to have legal authority are traceable to a "constitutional source." How, under this theory, can he justify an act, on the ground of "constitutional necessity?" Does the urgency of the case make an act legal in the view of Mr. Cushing? What clause of the Constitution does he

refer to as the "source of authority" for acts "of constitutional necessity?" Gen. Cass once entertained this suggestion of "constitutional necessity," but he treated it as a species of exotic incapable of acclimation in this country. He thought Congress possessed no power to authorize the formation of temporary governments, and declared that the acts of Congress for that purpose were justifiable only by an over-ruling necessity; that such action ought to extend no farther than to meet and overcome the necessity which demanded it. What in the mind of Gen. Cass was, at most, an exceptional authority—the assumption of a power not "traceable to a constitutional source," in the hands of Gen. Cushing becomes a settled principle of constitutional law. I think it worthy of observation that a man of Gen. Cushing's astuteness, granting his entire sincerity in advocating his "political theory of the United States," did not refer to the provision of the Federal Constitution which gives Congress power to legislate for the Territories; and, if no such provision is to be found, by what article or section of the Federal law, he justifies the action of Congress over the particular subject of slavery. Nobody, with a grain of sense, I can assure him, will be satisfied with acts resting altogether upon what he calls a "constitutional necessity." We live under a government whose organic law is written and recorded. The powers granted are specific. Nothing is left to inference, implication or "constitutional necessity." Certain powers are delegated, and Congress may exercise them and also such other powers as are necessary to carry into effect the delegated powers. Thus it is written in the organic law. It is not necessary here to speak of any other than delegated authority, for Mr. Cushing's "theory" embraces only that species of grant; those "acts" which are "traceable to a constitutional source." The forbidden and reserved powers are not "traceable" at all, of course, for they are mere negations.

Now, what I am anxious to find is the process by which acts of "constitutional necessity" may be *traced* to a "constitutional source." If they are not altogether irresponsible, as their name more than indicates —if they are not the legitimate offspring of the Higher Law and justifiable on the principle of self-defence, Gen. Cushing will have no difficulty in pointing to the provision of the national compact by which acts of "necessity" on the part of Congress are held by him to be "legal authority."

I like to call things by their right name. If there ever was an imposition practiced on the public—if there ever was a trick, cheat, juggle or slight of hand put upon a credulous people, it was a transparent, bungling affair when compared with this newly conceived "political theory of the United States," of Gen. Cushing. It is too ingenious and complicated to be called an error of judgment, a misconception of principles or a misunderstanding of terms. It is the deliberate work of an evil-minded man. Its genius is the genius of deception; its counsel the counsel of one who would exhibit "all the Kingdoms of the world and the glory of them," and who would say to the people "all these things will I give thee if thou wilt fall down and worship me." The ways of Providence are indeed mysterious! Mr. Cushing is singularly gifted

with industry, ability and learning. No man knows better the character of the American Government; no man has been more successful in distorting and misrepresenting that character. The only consolation the public are able to draw from this degrading picture of public life is to be found in the fact that Mr. Cushing, with all his ability, is the poorest possible specimen of an American partisan. His services are never given to the country, always to party. Subtle, learned and ingenious in argument; ambitious, unscrupulous and shameless in action, with a single eye always set upon the main chance, he presents a specimen of moral degradation and political profligacy which has not only eclipsed all former examples but has quite redeemed all past transgressions of the kind.

Mr. Cushing found no difficulty, of course, on the basis of the fundamental proposition embodied in the paragraph quoted, in reaching his conclusion that the governments of the Territories have no "legal authority" whatever to establish, abolish, or prohibit slavery. If all acts "must be traceable to a constitutional source"—if Constitutions, State or Federal, are the source of all authority, in other words—and there is no specific clause of the Compact of Union by which Congress may confer power upon the Territorial governments to do these things, then it follows that the Territories have no "legal authority" to ordain or prohibit slavery. The Supreme Court of the United States, in the case referred to in in these letters, say distinctly, that the powers of Congress over the subject are confined to the grant giving Congress the right to admit new States into the Union. This grant, coupled with the grant conferring power upon Congress to legislate *exclusively* for the District of Columbia, make it perfectly conclusive to my mind that the right of legislation by Congress over communities, not in the Union, is confined wholly to the District; and I hold it to be equally clear that what Congress could not itself do, it could not authorize a legislature of a Territory to do, and this is the positive opinion expressed by Chief Justice Taney. It follows, hence, that the right of a Territory to legislate for its own people is not derived at all from Congress, but is one of the powers expressly reserved—one of the powers which the Constitution declares shall remain with the people. Mr. Cushing relies largely, it is evident, upon "the theory of the equality of the States" to justify conclusions which he fails to justify by reference to the chapter and verse of the Constitution. The scheme of American public law, which is maintained upon this expanding and contracting system of construction —which substitutes the mere caprices of fanaticism, concerning the equality of the States, for the Constitution itself—which confers power upon Congress without a word of authority in the written law, and wholly on the basis of what is flippantly called "equality," is, in my judgment, entitled to rank only with the ravings of the maniac on the one side, or the insolence and selfishness of political sectarianism on the other. If Mr. Cushing was honest in his advocacy of this seditious and revolutionary theory, why did he not refer to the authority of the Constitution? Why did he not point to the article or section of the fundamental law, by which the power is given to Congress to legislate on the

subject of slavery anywhere? and if that authority was not at hand, then the power to delegate the right to exercise it by a Territorial government? If the power exists, why not name it? If it does not exist, why seek to establish it by ingenious subterfuge, by glittering generalities about the equality of the States?

The issue is raised upon a written law. Mr. Yancey, two years ago, in the Commercial Convention held in this place, declared the Acts of Congress suppressing the foreign slave trade unconstitutional and void, because such suppression was a violation of the principle of the equality of the States—a principle which he declared to be fundamental, *underlaying* the Constitution itself. He more than intimated in that discussion that all tariff laws, all laws restricting, directly or indirectly, the operations of trade, are violations of his "fundamental theory," and unconstitutional and void. Mr. Yancey maintained that slavery is Southern labor; and the suppression of the slave trade discriminated against that labor; that such discrimination produced inequality of rights between the North and the South, and thus destroyed the basis of Union. Mr. Cushing takes hold of the same lever to produce an affirmative result. Mr. Yancey made acts relating to slavery unconstitutional and void by virtue of the scheme of the "equality of the States;" Mr. Cushing proposes to confer power upon Congress by the same instrumentality. The next we shall hear of this doctrine will be in the declaration of the new States that they are entitled to all the unappropriated lands within their limits, on the ground that the old States possessed said lands; or perhaps in a solemn announcement that appropriations by Congress shall be expended in each State in proportion to the number of the inhabitants of each. It is hardly possible, indeed, that the doctrine will stop short of an equalization of wealth and improvements, and it may be hoped, education, intelligence, and industry. Mr. Yancey distinctly raises the question of the inequality of the States with respect to foreign immigration. We may therefore soon expect to hear that "the equality of the States" demands that persons coming into the country from abroad, shall be distributed equally over the Union. It is evident that a new principle of constitutional law has been discovered; that all that has been said upon this power and that—delegated, forbidden or reserved—in the national compact, must go for nothing. Another estate has been developed greater than all; an estate which is free from all the restraints of the written law; which has a self-expanding power; which is to regulate the standard of morality for this nation, if not for the world; which is to take slavery out of the hands of the people and make it the corner-stone and foundation of this great Democratic Government.

All this is to be done on the simple authority of "the equality of the States." The "equality of the States" demands that the foreign slave trade shall be reopened; that Africa shall give up her men and women, that "the labor of the South" shall be kept upon an "equality" with the labor of the North; that slavery shall be extended, not "by virtue of the Federal Constitution," as Mr. Buchanan ignorantly affirms, but by virtue of "the equality of the States," as Mr. Hunter, Mr. Yancey, and Mr. Cushing argue.

The latter gentleman is immensely indignant that any man should presume to set up against his new theory the right of the Territories to determine for themselves what shall be their institutions. There is no limit to the invective and denunciation which he hurls against Mr. Yancey's opponents. His indignation, however admirable in tone and sanguinary in utterance, is, I fear, somewhat deficient in sincerity and heart. It is not the first time that Mr. Cushing has played the part of patriot in the political comedies of the day. He has before amused American audiences by exhibitions of the same common character. Nor has his life been perfectly consistent; he has not always undertaken the performance of the same rôle. The public indeed understand that Mr. Cushing is something of an artist in political mosaics—he knows, as Burke says, how to place a bit of white stone here and a bit of black stone there—how to get up and perfect a tesselated work of the kind so as to give it the caste of unity and perfection. I will exhibit to the reader a very charming specimen of this kind of artifice of Mr. Cushing's, which he presented to the people of Ashland, Virginia, four years ago. Here it is:

SPEECH OF CALEB CUSHING, AT ASHLAND, VA., APRIL 12TH, 1856.

"I anticipate that many eloquent and stirring things will be said by gentlemen present, in exposition of the character of the career and of the fame of Henry Clay. I will venture to stand upon a single point in that great, brilliant and glorious career. I will refer only to that final struggle of the patriotic efforts of Henry Clay, that final struggle in the Senate of the United States, when he coöperated with others of his compeers, and among them gentlemen here present, in those efforts which resulted in the establishment, I will venture to say *in the perpetual and unshakeable establishment in the public law and political theory* of these United States, of the absolute equality, the *coequal political autonomy* of each and all these States. The corollary of that doctrine is, the *establishment of the corresponding theory that, each distinct* INCHOATE STATE of this Union shall determine for itself what shall be its own institutions. I say, if he left no other legacy to his countrymen, it would be sufficient to perpetuate his memory, that he aided in the establishment of that principle, which *has* NOW become *fixed* and *irrevocable*, in spite of all the howls of faction. In all parts of this Union, it must become the unanimous conviction of the people of these United States that, whether a State in this Union is or is not to regulate labor in this or that manner, depends upon the will of the people of that State or TERRITORY."

I shall not apologize for explaining what Mr. Cushing means by the *autonomy* of the States. The word signifies the power of self-government. He was then maintaining the principles of self-government and

their application to the Territories. This word expresses, in the connection in which I present it, a terrible rebuke of Mr. Cushing. He was denouncing the doctrine of Congressional usurpation, of centralization, and advocating the theory of the "coequal political autonomy of each and all these States." It was the maintenance of this Democratic theory which was to perpetuate the memory of Henry Clay—a principle which, chiefly through the efforts of that great man, had "become fixed and irrevocable in spite of all the howls of faction." I commend this bitter denunciation by Caleb Cushing in 1856 of Caleb Cushing in 1860.

I remain, most respectfully,

NATHANIEL MACON.